



ENVIRONMENTAL PROTECTION AGENCY

[FRL-9947-58-Region 3]

Delegation of Authority to the Commonwealth of Virginia to Implement and Enforce Additional or Revised National Emission Standards for Hazardous Air Pollutants Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation of authority.

SUMMARY: On April 7, 2016, the Environmental Protection Agency (EPA) sent the Commonwealth of Virginia (Virginia) a letter acknowledging that Virginia's delegation of authority to implement and enforce the National Emissions Standards for Hazardous Air Pollutants (NESHAPs) had been updated, as provided for under previously approved delegation mechanisms. To inform regulated facilities and the public, EPA is making available a copy of EPA's letter to Virginia through this notice.

DATES: On April 7, 2016, EPA sent Virginia a letter acknowledging that Virginia's delegation of authority to implement and enforce federal NESHAPs had been updated.

ADDRESSES: Copies of documents pertaining to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029. Copies of Virginia's submittal are also available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Ray Chalmers, (215) 814-2061, or by e-mail at chalmers.ray@epa.gov.

SUPPLEMENTARY INFORMATION: On February 10, 2016, Virginia notified EPA that Virginia had updated its incorporation by reference of federal NESHAPs to include many such standards, as they were published in final form in the Code of Federal Regulations dated July 1, 2015. On April 7, 2016, EPA sent Virginia a letter acknowledging that Virginia now has the authority to implement and enforce the NESHAPs as specified by Virginia in its notice to EPA, as provided for under previously approved automatic delegation mechanisms. All notifications, applications, reports and other correspondence required pursuant to the delegated NESHAPs must be submitted to both the US EPA Region III and to the Virginia Department of Environmental Quality, unless the delegated standard specifically provides that such submittals may be sent to EPA or a delegated State. In such cases, the submittals should be sent only to the Virginia Department of Environmental Quality. A copy of EPA's letter to Virginia follows:

“Michael G. Dowd, Director
Air Division
Virginia Department of
Environmental Quality
629 East Main Street
P.O. Box 1105
Richmond, Virginia 23218

Dear Mr. Dowd:

The United States Environmental Protection Agency (EPA) has previously delegated to the Commonwealth of Virginia (Virginia) the authority to implement and enforce various federal

National Emissions Standards for Hazardous Air Pollutants (NESHAPs) found at 40 CFR Parts 61 and 63. In those actions, EPA also delegated to Virginia the authority to implement and enforce any future EPA NESHAPs on the condition that Virginia legally adopt the future standards, make only allowed wording changes, and provide specified notice to EPA.

In a letter dated February 10, 2016, Virginia informed EPA that Virginia had updated its incorporation by reference of federal NESHAPs to include many such standards, as they were published in final form in the Code of Federal Regulations dated July 1, 2015. Virginia explained that its intent in updating its incorporation by reference of the NESHAPs was to retain the authority to enforce all standards included in the revisions, as per the provisions of EPA's previous delegation actions. Virginia committed to enforcing the federal standards in conformance with the terms of EPA's previous delegations of authority. Virginia made only allowed wording changes.

EPA notes that Virginia provided a copy of the State's regulatory action that states: "[t]he amendments update state regulations that incorporate by reference certain U.S. Environmental Protection Agency regulations to reflect the Code of Federal Regulations as published on July 1, 2015. No new NESHAPs or MACTs are being incorporated. The date of the Code of Federal Regulations book being incorporated by reference is being updated to the latest version." Virginia's regulatory action indicates that "[t]he revised regulations have an effective date of February 10, 2016."

EPA also notes that Virginia provides in its regulatory action that "[t]he Environmental

Protection Agency National Emission Standards for Source Categories (Maximum Achievable Control Technologies, or MACTs) as promulgated in 40 CFR Part 63 and designated in 9VAC5-60-100 are, unless indicated otherwise, incorporated by reference into the regulations of the board [State Air Pollution Control Board] as amended by the word or phrase substitutions given in 9VAC5-60-110. The complete text of the subparts in 9VAC5-60-100 incorporated herein by reference is contained in 40 CFR Part 63. The 40 CFR section numbers appearing under each subpart in 9VAC5-60-100 identify the specific provisions of the subpart incorporated by reference. The specific version of the provision adopted by reference shall be that contained in the CFR 2015 in effect July 1, 2015.”

EPA further notes that Virginia provides in its regulatory action that “[t]he Environmental Protection Agency National Emission Standards (NESHAPs) as promulgated in 40 CFR Part 61 and designated in 9VAC5-60-70 are, unless indicated otherwise, incorporated by reference into the regulations of the board as amended by the word or phrase substitutions given in 9VAC5-60-80. The complete text of the subparts in 9VAC5-60-70 incorporated herein by reference is contained in 40 CFR Part 61. The 40 CFR section numbers appearing under each subpart in 9VAC5-60-70 identify the specific provisions of the subpart incorporated by reference. The specific version of the provision adopted by reference shall be that contained in the CFR 2015 in effect July 1, 2015.”

In response to Virginia’s submittal, EPA acknowledges that Virginia now has the authority, as provided for under the terms of EPA’s previous delegation actions, to implement

and enforce the NESHAP standards which Virginia has adopted by reference in Virginia's revised regulations 9 VAC 5-60-100 and 9 VAC 5-60-70, both effective on February 10, 2016.

Please note that on December 19, 2008, in *Sierra Club v. EPA*,¹ the United States Court of Appeals for the District of Columbia Circuit vacated certain provisions of the General Provisions of 40 CFR Part 63 relating to exemptions for startup, shutdown, and malfunction (SSM). On October 16, 2009, the Court issued a mandate vacating these SSM exemption provisions, which are found at 40 CFR § 63.6(f)(1) and (h)(1).

Accordingly, EPA no longer allows sources the SSM exemption as provided for in the vacated provisions at 40 CFR § 63.6(f)(1) and (h)(1), even though EPA has not yet formally removed these SSM exemption provisions from the General Provisions of 40 CFR Part 63. Because Virginia incorporated 40 CFR Part 63 by reference, Virginia should also no longer allow sources to use the former SSM exemption from the General Provisions of 40 CFR Part 63 due to the Court's ruling in *Sierra Club vs. EPA*.

EPA appreciates Virginia's continuing NESHAP enforcement efforts, and also Virginia's decision to take automatic delegation of more recent NESHAP by adopting them by reference.

¹ *Sierra Club v. EPA*, 551 F.3rd 1019 (D.C. Cir. 2008).

Sincerely,

Nikos Singelis, Acting Director
Air Protection Division”

This notice acknowledges the update of Virginia’s delegation of authority to implement and enforce NESHAP and NSPS.

Dated June 1, 2016.

Nikos Singelis, Acting Director,
Air Protection Division,
Region III.

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